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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NATALIE DRACUP, Plaintiff and Appellant, v. REGIONAL CENTER OF ORANGE COUNTY, Defendant and Respondent.	G054651 (Super. Ct. No. 30-2010-00414596) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Mary Fingal Schulte, Judge. Affirmed. Request for judicial notice. Denied.

Pamela Patterson for Plaintiff and Appellant.

Woodruff, Spradlin & Smart and M. Lois Bobak for Defendant and Respondent.

Plaintiff Natalie Dracup appeals from a posttrial judgment entered against her after the trial court, sitting as the trier of fact, found for defendant Regional Center of Orange County on the sole remaining cause of action in the operative complaint—breach of contract. She contends the court unwarrantedly ignored evidence revealing an ambiguity in the relevant contractual language, which if recognized would have resulted in a finding that defendant breached the contract. In addition, she asserts the court erroneously denied her pretrial motion to reconsider a four-year-old demurrer ruling or, alternatively, grant her leave to amend the complaint. We find no error and, thus, we affirm the judgment.

FACTS

This case has a rather lengthy and convoluted history, but the facts and procedural background relevant to the limited issues raised in this appeal are relatively succinct. Plaintiff, now 20 years old, is developmentally disabled and in need of a variety of care. Since birth, her mother, who is also her attorney of record, has worked with defendant, a government funded nonprofit corporation which supports and seeks to maximize the quality of life of individuals with disabilities, to ensure plaintiff receives the services to which her mother believes she is entitled.

In 2007, after a dispute with defendant about services for plaintiff and related details, plaintiff's mother entered into a written settlement agreement (2007 Settlement Agreement) with defendant. Roughly three years later, plaintiff and her mother filed the instant suit against defendant. The original complaint alleged a breach of contract (i.e., the 2007 Settlement Agreement), as well as intentional and negligent misrepresentation.

Following multiple amendments to the complaint, which added numerous causes of action, defendant demurred to all causes of action except that alleging breach of contract. In mid-2012, the trial court sustained the demurrer without leave to amend due

to plaintiff's failure to exhaust her administrative and judicial remedies.[1] Believing plaintiff "obtained all of the relief she sought in the breach of contract cause of action" through informal mediation, the court subsequently entered judgment in plaintiff's favor on that cause of action. Plaintiff appealed and this court reversed the judgment on the sole ground that it was an abuse of discretion for the court to enter judgment because the breach of contract cause of action was technically still pending. (*N.D. v. Regional Center of Orange County* (April 30, 2014, G048573) [nonpub. opn.].)

Approximately two and one-half years later, and about four weeks before the scheduled trial date, plaintiff filed a motion asking the trial court to reconsider its June 2012 demurrer ruling or, alternatively, grant her leave to amend the complaint to add multiple causes of action, including some previously dismissed. The court ultimately denied both requests, finding them to be untimely and additionally concluding defendant would be prejudiced by the proposed amendment.

After bifurcating the issues of liability and damages, the matter proceeded to a bench trial concerning the former. The primary point of contention was interpretation of a provision in the settlement agreement concerning a particular agreed upon service and the associated payment rate. Plaintiff argued other language in the agreement rendered the disputed provision ambiguous, and it therefore should be interpreted as allowing for a higher level of care with a higher payment rate. Based on that interpretation, plaintiff claimed defendant owed her additional sums. Defendant relied on what it characterized as the unambiguous language of the agreement,

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[1] Neither the demurrer nor the trial court's ruling on it are included in the record on appeal. We take judicial notice of the superior court records of both on our own motion. (Evid. Code, §§ 452, subd. (d)(1), 459.) We deny defendant's request for judicial notice of various other superior court records in cases filed by plaintiff as those documents are not relevant to the issues raised in this appeal and do not provide relevant background.

contending it satisfied its obligations because it had paid plaintiff based on the rate specified in the agreement.

After hearing all testimony and reviewing written closing arguments, the trial court issued a minute order finding in favor of defendant on the issue of liability. It entered judgment accordingly. Plaintiff timely appealed.

DISCUSSION

Plaintiff challenges the trial court's (1) denial of her request for reconsideration of the June 2012 sustaining of defendant's demurrer or, alternatively, for leave to amend the complaint; and (2) interpretation of the settlement agreement which resulted in a judgment against her. While we understand her mother's good intentions, as counsel, in seeking care for her, there is no legal merit to these arguments.

A. Motion for reconsideration or leave to amend the complaint

Timing is crucial when a motion for reconsideration or a motion seeking leave to amend a complaint hangs in the balance. And it is dispositive in this case.

"A party's motion for reconsideration of an order must be made within 10 days after service of notice of entry of the order. (Code Civ. Proc., § 1008, subd. (a).) But that time limitation does not apply to a party's renewal of a motion or a court's sua sponte reconsideration of an order if there has been a change of law. (*Id*., subds. (b), (c).) 'A party who originally made an application for an order which was refused in whole or part . . . may make a subsequent application for the same order upon new or different facts, circumstances, or law . . . .' (*Id*., subd. (b).) A renewed motion may be brought whether the order denying the previous motion is 'interim or final.' (*Id*., subd. (e).)" (*Phillips v. Sprint PCS* (2012) 209 Cal.App.4th 758, 768.) "The party seeking reconsideration must provide not just new evidence or different facts, but a satisfactory explanation for the failure to produce it at an earlier time." (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457.) We review a trial court's ruling on a motion for reconsideration for abuse of discretion. (*Ibid*.)

Here, plaintiff's motion to have the trial court reconsider the demurrer ruling came nearly four years after the original ruling. In the appeal from the ensuing judgment, plaintiff did not challenge the demurrer ruling which had resulted in dismissal of all but one of her claims. Thus, whether viewed from a pure reconsideration timeliness perspective or one of waiver due to failure to appeal, plaintiff's attempt to resurrect the dismissed claims was fatally belated. (See Code Civ. Proc., § 1008, subd. (a); *Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93 [failure to challenge demurrer ruling on appeal from judgment renders demurrer ruling final and unchallengeable].)

Plaintiff asserts the reconsideration motion was timely because her mother learned of new facts and new law while preparing for a deposition about one week before plaintiff filed the reconsideration motion. Specifically, she states her mother came to understand the meaning of certain acronyms used in the 2007 Settlement Agreement and discovered state regulations which she believed applicable based on that enlightened understanding. Though these things may have, in fact, been new knowledge to plaintiff's mother, they were not "new or different" as those terms are used in the context of a reconsideration motion.

A lack of familiarity with the law is not a basis on which a court may grant reconsideration; neither is an unjustifiable negligence in discovering the law. (*Hearn v. Howard* (2009) Cal.App.4th 1193, 1206; *Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 670.) And absent exceptions not raised here, a person who executes a contract, such as a settlement agreement, is presumed to understand and agree to its terms. (*Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299, 303; see also *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810 ["A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts"]; *Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal.App.4th 938, 959 ["Reasonable diligence requires a party to read a contract before signing it"].) These are well-established legal principles which we must uniformly apply.

We likewise find no bases to grant relief concerning the denial of plaintiff's request for leave to amend her complaint. Trial courts have broad discretion to allow a party to amend a complaint "in furtherance of justice" (Code Civ. Proc., § 473, subd. (a)), and we review their exercise of discretion for abuse of it. (*Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1377.) "'"[T]he appropriate exercise of that discretion requires the trial court to consider a number of factors: 'including the conduct of the moving party and the belated presentation of the amendment. . . .'" [Citation.] [¶] . . . '"'"[E]ven if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial."'" [Citations.] 'Thus, [if the trial court denies a motion to amend during trial,] appellate courts are less likely to find an abuse of discretion where, for example, the proposed amendment is "'offered after long unexplained delay . . . or where there is a lack of diligence . . . .'" [Citation.]" (*Ibid.*)

The trial court was presented with and considered all of those factors, among others. To begin, many of the 11 causes of action plaintiff wanted to add to the complaint were the same ones the court previously dismissed by way of demurrer. For the other additional allegations, which specifically stemmed from her mother's hard work in attempting to understand some of the 2007 Settlement Agreement language, defendant explained why allowing the amendment would be prejudicial. The case had been pending for nearly six years and trial was just over one month away. Plaintiff had already amended the complaint four times, discovery was closed, the trial court had heard numerous pretrial motions, and all that remained was trial on the breach of contract cause of action. Under these circumstances, we cannot say the trial court abused its discretion in denying plaintiff's request to amend the complaint. (See *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957 ["[T]here is no abuse of discretion requiring reversal if there exists a reasonable or fairly debatable justification under the law for the trial court's decision"]; *Estate of Murphy* (1978) 82 Cal.App.3d 304, 311

["[w]here inexcusable delay and probable prejudice to the opposing party is indicated, the trial court's discretion in denying a proposed amendment should not be disturbed"].)

B. Breach of contract

Settlement agreements are interpreted under the same rules of construction that apply to contracts generally. (Civ. Code, § 1635; *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 306.) "Under long-standing contract law, a 'contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.' [Citation.]" (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 524.) """'Such intent is to be inferred, if possible, solely from the written provisions of the contract.' [Citation.] 'If contractual language is clear and explicit, it governs.' [Citation]" [Citation.]'" (*County of San Diego v. Ace Property & Casualty Ins. Co.* (2005) 37 Cal.4th 406, 415.) In contrast, if the contract language at issue is ambiguous, meaning it is subject to more than one reasonable interpretation, then courts attempt to discern which interpretation the parties intended by reviewing extrinsic evidence such as the parties' performance under the agreement. (See *In re Tobacco Cases I* (2010) 186 Cal.App.4th 42, 52.)

The 2007 Settlement Agreement provided, in pertinent part, that the parties "mutually agree[d]" to the following:

> "(1) Regional Center Orange County (RCOC) shall fund 60 hours per week of LVN level care (PVR/RHC) at Medi-Cal rate, which is currently at $29.41 per hour. A RN can provide hours; however, the rate may not exceed the LVN rate.
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> "[¶] . . . [¶]
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> "(2) In the event of the unavailability of the LVN level care providers, the hours in paragraph (1) above can be converted to respite level care (PVR/RHC). Hours must be provided by individuals who have been trained in and meet RHC requirements. PRVR/RHC hours will be paid at the prevailing respite rate. If this

option is utilized, it is Regional Center of Orange County's expectation that more than one caregiver would be utilized to provide these services (as a typical work week is 40 hours per week).

"(3) RCOC shall fund 30 hours per week of parent-vendored respite, restricted health condition (PVR/RHC) at the prevailing respite rate; current rate is $8.83 per hour."

Given plaintiff's success over the years with certain unlicensed care providers, her mother chose to continue using their services. Those unlicensed care providers underwent CPR and first aid training, but none obtained a state license to be, for example, a certified home health aide.

The contractual provisions quoted above are clear. Licensed vocational nurse (LVN) level care would be funded at the associated Medi-Cal rate, which was $29.41 per hour at the time the parties executed the agreement. If licensed providers were not available, the LVN level care hours could be turned into respite level care hours and funded at the "prevailing respite rate." The evidence proves the latter is what occurred.

Plaintiff does not contend her providers were paid less than the prevailing respite rate, but instead argues the contractual language is ambiguous. She therefore urges us to review extrinsic evidence to aid our interpretation and claims the evidence demonstrates the services she received should have been paid at a rate of $18.90 per hour—the purported rate for "home health aide" services.

But the disputed language is not reasonably susceptible to the meaning plaintiff urges, or any other meaning. Respite level care has a precise statutory definition: "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member." (Welfare & Inst. Code, § 4690.2, subd. (a).) It is designed to: "(1) Assist family members in maintaining the client at home. [¶] (2) Provide

appropriate care and supervision to ensure the client's safety in the absence of family members. [¶] (3) Relieve family members from the constantly demanding responsibility of caring for the client. [¶] (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members." (*Ibid*.)

Home health aide services has a different statutory definition: "personal care services provided under a plan of treatment prescribed by the patient's physician and surgeon who is licensed to practice medicine in the state." (Health & Saf. Code, § 1727, subd. (d).) In order to provide these services, a person must be state certified through a process which involves, inter alia, 75 hours of training. (Health & Saf. Code, §§ 1727, subds. (c) & (d), 1736.1, subd. (a)(1).)

The 2007 Settlement Agreement details levels of care, numbers of hours and payment rates, but nowhere does it mention home health aide services. We have no authority to rewrite the parties' agreement. (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1143.)

In sum, adhering as we must to the fundamental canons of contract interpretation, we conclude the trial court did not err in granting judgment for defendant.

DISPOSITION

The judgment is affirmed. In the interests of justice, the parties shall bear their own costs on appeal.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.